(17,584.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 166.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, PLAINTIFF IN ERROR,

vs.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

	Original.	Print.
Notice of presentation of order	1	1
Certificate of judges of United States circuit court of appeals	2	1
Statement	2	1
Questions certified	3	2
Amended complaint	5	2
Answer	11	6
Referee's report	16	9
Opinion of referee	22	12
Judgment of United States circuit court	40	23
Clerk's certificate	42	23

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 2, 1900.

1 United States Circuit Court of Appeals for the Second Circuit.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, Plaintiff in Error,
against
LA COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant in Error.

SIR: You will please take notice that a proposed order herein, of which a copy is hereto annexed, will be presented at the office of the clerk of the above-named court on the 24th day of November, 1899, at 10.30 o'clock in the forenoon of that day, for presentation to the judges thereof for settlement.

Dated New York, November 23rd, 1899.

Yours, etc.,
JONES & GOVIN,
Att'ys for Defendant in Error.

To E. L. Fancher, Esq., att'y for plaintiff in error.

2 United States Circuit Court of Appeals for the Second Circuit.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, Plaintiff in Error,
against
LA COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant in Error.

This cause came on to be heard and is now pending in this court upon a writ of error to the circuit court of the United States for the southern district of New York to review the judgment rendered in the above entitled suit by the said circuit court, dismissing the plaintiff's complaint with costs and disbursements of this action, upon the report of a referee appointed to hear and determine all the issues in the said action.

The defendant in error is a foreign corporation, owning and plying a regular line of steamers between Havre and New York. On the morning of December 10th, 1892, one of the defendant's steamers, "La Bretagne," while outward bound from the port of New York to Havre by way of Sandy Hook, with cargo and passengers, struck the plaintiff's pier, damaging it to the amount of upwards of thirteen thousand (13,000) dollars. The said vessel at the
3 time she left her pier was in all respects seaworthy and properly manned, equipped, and supplied, and her owner exercised due diligence to make her so. She had on board a Sandy Hook pilot, duly licensed under and pursuant to the laws of the State of New York, and was navigated under his direction up to the time of said collision, and all his orders were promptly and efficiently obeyed and carried out by the master, officers, and crew of said steamship.

The said collision and the damage resulting therefrom were caused solely by the negligence and want of skill and care on the part of the said pilot and not by any want of skill or negligence on the part of the master, other officers, or crew of the said steamship.

Certain questions of law arise in the cause concerning which the court desires the instructions of the Supreme Court for its proper decision and which are as follows:

First. Whether the provisions of chapter 467 of the laws of New York passed June 28, 1853, as amended by chapter 196 of the laws of said State passed April 11, 1854; chapter 243 of the laws of the said State passed April 3rd, 1857; chapter 930 of the laws of the said State passed May 16, 1867, and chapter 548 of the laws of said State passed May 2, 1870, and consolidated into sections 2093 to 2123, inclusive, of chapter 410 of the laws of said State passed July 1, 1882,
impose compulsory pilotage on foreign vessels inward and
4 outward bound to and from the port of New York by way of
Sandy Hook, in view of the decisions of the New York court of appeals.

Second. Whether in an action at common law the ship-owner is liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily.

In accordance with the provisions of section 6 of the act of March 3, 1891, establishing circuit courts of appeal, etc., the foregoing questions of law are by the circuit court of appeals hereby certified to the Supreme Court.

And it is ordered that the clerk of this court do certify the pleadings, the report, and the opinion of the said referee, together with the judgment of the said circuit court entered upon the said report, and transmit the same to the Supreme Court for its inspection and examination in answering and determining the said questions.

Dated New York, March 18th, 1899.

WM. J. WALLACE,
U. S. Circuit Judge.
E. HENRY LACOMBE, *U. S. C. J.*
N. SHIPMAN, *U. S. Circuit Judge.*

5 United States Circuit Court for the Southern District of New York.

(Action removed from the supreme court of the State of New York.)

THE HOMER RAMSDELL TRANSPORTATION Company *against* THE COMPAGNIE GENERALE TRANSATLANTIC (a Foreign Corporation, Known as the French Line of Mail Steamers).	Amended Complaint. Trial to be Had in the City and County of New York.

The complaint of the above-named plaintiff respectfully alleges:

1. The plaintiff, The Homer Ramsdell Transportation Company, is a domestic corporation now existing, and organized and incorporated January 6, 1880, under and pursuant to the provisions of

the act of the legislature of the State of New York, being chapter 40, Laws of 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes, passed February 14, 1848, and the several acts of said legislature, supplementary and amendatory thereof (see 3 R. S., 8th ed., p. 1953 *et seq.*), and ever since said organization and incorporation, the said Homer Ramsdell Transportation Company has been, and still is, in lawful existence and operation, carrying on the business of transporting freight and passengers and propelling steamers by steam power on the Hudson river, in said State, between the city of Newburgh and the city of New York, in said State.

6 2. For the purpose of such transportation business one of plaintiff's incorporators, Homer Ramsdell, entered into and received from the mayor, aldermen and commonalty of the city of New York by the board of docks, thereto duly authorized, an indenture of lease, made and dated on the 28th day of August, 1889, by and between the said the mayor, aldermen and commonalty of the city of New York by the board of docks, parties of the first part, and the said Homer Ramsdell, of Newburgh, Orange county, N. Y., party of the second part, whereby the said parties of the first part to the said lease, granted, bargained, sold, demised and assigned unto the said Homer Ramsdell, party of the second part, and his assigns, for the term of ten years from the first day of February, 1889, all and singular, the wharfage which may arise, accrue, or become due for the use and occupation in the manner and at the rates prescribed by law, of

All that certain public wharf property situated on the North river, in the city and county of New York, and known and described as follows, to wit: Pier number twenty-four (24), new, near the foot of Franklin street, including the spurs or triangular projections or extensions on the sides thereof, and the right to use and occupy the same for the special kind of commerce carried on by steam transportation.

Together with the right to enter upon the said wharf property for the purposes of said lease, and to collect the said wharfage, and to use and occupy the same, as aforesaid, with a covenant of renewal, of the said lease for a further term of ten years on the terms and conditions therein specified.

And in and by the said indenture of lease it was provided, among other things, as follows, to wit:

"And the said parties of the first part hereby grant and permit to the said party of the second part the right to erect, construct
7 and maintain upon the said pier, during the terms of these presents, including the renewal thereof, if any, as herein provided, a shed, said shed to be erected in accordance with the laws and regulations in such cases made and provided, and in conformity with the plans and specifications submitted therefor, which have been approved, the work to be done under the direction and supervision of the engineer-in-chief of the department of docks."

And it was further provided in and by the said lease as follows: "And the said party of the second part covenants and agrees that he will, at all times during said term, including any renewal thereof, put, keep and maintain the said wharf property, and every part thereof, and the structure thereon, including the said shed, spurs or triangular projections or extensions, in such good and sufficient repair and condition as the board of docks shall reasonably require and deem necessary, under the direction and supervision of the proper officer of the department of docks, and that all such repairs during said term, or any renewal thereof, shall be done at the sole cost, charge and expense of the said party of the second part, his representatives or assigns;" and the said lease was immediately thereafter duly assigned to the plaintiff, and the plaintiff assumed all the obligations and covenants of the said Homer Ramsdell in and respecting the same and the said pier.

3. Ever since the execution of the said lease the said plaintiff has been thereunder in the occupancy and possession of said pier, new No. 24, North river, and has carried on there its transportation business by its steamboats from Newburgh, aforesaid, to the said pier, and is the owner thereof, and of the shed thereon.

And of late the dock department has extended the said
8 pier in connection with the said lease, and subject to the provisions thereof, so that until the collision hereinafter named, the said pier was six hundred and seventy-one feet in length by sixty feet wide, and was with the shed thereon, in use by the plaintiff, as such assignee and owner.

Portions of the said pier were sublet by the plaintiff to other steamboat transportation companies coming from other places on the Hudson river, and plaintiff was in receipt of rents from such other transportation companies, which rents have been suspended and lost in consequence of the said collision.

4. The defendant is a foreign corporation under the name of Compagnie Generale Transatlantique, organized and existing under the laws of the Republic of France, and is generally known as the French line of mail steamers, between Havre and New York. Between said Havre, a port in France, and the port of New York, the defendant is engaged in the business of plying certain steamers for freight and passengers, one of which steamers is named La Bretagne.

5. At about 8.30 a. m. on the 10th of December, 1892, the defendant's said steamship, La Bretagne, while outward bound from the port of New York, having shortly before left her pier on the North river, struck the said pier new No. 24 in the occupancy of the plaintiff, and did the following damage thereto:

Said steamship La Bretagne struck the north side of the said pier and cut through the same to within about fifteen feet of the southerly side of the pier, destroying the same and breaking the piles, caps and other portions thereof, on which the same was placed, as well as moving the floor of the same several feet southward, and also breaking down and destroying a portion of the plaintiff's shed on the said pier; and causing damage to the said pier
9 and shed to the amount of thirteen thousand dollars.

Said collision also damaged and injured the residue of the

said pier, and such damage has been, since the occurrence thereof, necessarily repaired by the plaintiff under the supervision of the proper officer of the dock department, at the expense of the plaintiff to the amount of $13,153.34.

6. In addition to the said immediate damage above mentioned plaintiff is injured by the said collision of the said steamship by having been deprived of the use of the said pier in the damaged portions thereof during the time of said reparation, and also by being prevented from completing a lease to other transportation companies for the use of the same to the extent of about two thousand dollars.

Also the plaintiff has been damaged by the said collision in the loss of rent on the said pier, paid by the plaintiff to the dock department for the time of said repairs, to the amount of $2,000 on the outer extension of the pier, and to a further amount of $2,000 on the residue of the pier.

The aforesaid collision, and damages resulting therefrom, were caused solely and only by the negligence and unskillful management of the said steamship La Bretagne, and the officers and agent of the defendant in charge thereof, and by reason of the negligence and wrongful act of the defendant and its agent, servants and the officers and other person or persons employed by the defendant or under its authority.

7. Said plaintiff, under said lease and assignment and assumption of its covenants, is liable to the dock department and the city of New York, and has been required to rebuild said pier and shed, and to repair the damages to the said pier and shed, and a notice to effect such repairs has already been served from the dock department on the plaintiff.

10 The said defendant has property now within the State and city of New York in and upon the said steamer La Bretagne now moored at the foot of Morton street, on the North river, and also property in the office of the said company at No. 3 Bowling Green, in the city of New York.

Wherefore the said plaintiff asks of this honorable court an attachment pursuant to the provisions of the Code of Procedure, to be issued against the said foreign corporation, the defendant, above named.

And also demands judgment in this action against the said defendant for the sum of eighteen thousand dollars for the aforesaid damages of the plaintiff in the premises, with interest on that sum from December 21, 1892, and the costs of this action.

E. L. FANCHER,
Attorney for Plaintiff.

CITY AND COUNTY OF NEW YORK, *ss:*

Homer S. Ramsdell, being duly sworn, says: That he is the secretary of the above-named plaintiff, and has read the aforegoing complaint and knows the contents thereof. That the same is true to the knowledge of deponent, except as to the matters therein

stated to be alleged on information and belief and that as to those matters he believes it to be true.

HOMER S. RAMSDELL.

Sworn this 3d day of April, 1893, before me.

WILLIAM H. HARRIS,
Notary Public, New York County.

11 Circuit Court of the United States, Southern District of New York.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, Plaintiff,
against
THE COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant.

The above-named defendant, answering the amended complaint of the above-named plaintiff, alleges:

As a first defense.

First. The defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph or division of the said amended complaint marked "1," and, therefore, denies the same.

Second. The defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph or division of the said amended complaint marked "2," and, therefore, denies the same.

Third. The defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph or division of the said amended complaint marked "3," and, therefore, denies the same.

12 Fourth. The defendant admits the allegations contained in paragraph or division of the said amended complaint marked "4."

Fifth. The defendant admits that at about 8.30 a. m. on the 10th day of December the steamship La Bretagne while outward bound from the port of New York, having shortly before left her pier on the North river, struck pier new No. 24, as alleged in paragraph or division of the said amended complaint marked "5," but the defendant has no knowledge or information sufficient to form a belief as to any of the other allegations contained in said paragraph or division of the said amended complaint marked "5," and, therefore, denies the same.

Sixth. The defendant has no knowledge or information sufficient to form a belief as to the allegations as to the plaintiff's alleged damages contained in paragraph or division of the said amended complaint marked "6," and, therefore, denies the same; and this defendant denies that the aforesaid collision, and damages resulting therefrom, were caused solely and only by the negligence and unskillful management of the said steamship La Bretegve, and the officers and agent of the defendant in charge thereof and by reason

of the negligence and wrongful act of the defendant and its agent servants and the officers and other person or persons employed by the defendant or under its authority.

Seventh. The defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph or division of the said amended complaint marked "7," and, therefore, denies the same, except that the defendant admits that at the date of the verification of the said amended complaint it had property within the State and city of New York in and upon the said steamer La Bretagne, then moored at the foot of Morton
13 street, on the North river, and also property in its office at No. 3 Bowling Green, in the city of New York.

Second defense.

And the said defendant, further answering the said amended complaint, alleges, upon information and belief, as a second defense:

That the wharf or pier mentioned in the said amended complaint, and with which the defendant's said steamship, La Bretagne, collided at the time stated in the said amended complaint, is, and was at the said time of the said collision, an unlawful structure, an obstruction to navigation, and as such a public nuisance to a national highway of commerce, to wit, the North or Hudson river, through which the said steamer was lawfully passing at the time of the said collision, and at a place where she was, by reason of the exigencies of navigation, obliged to pass, and that the free navigation of the stream or river upon which the said wharf or pier is, and was, erected, as aforesaid, is, and was, interfered with and impeded, which obstruction, interference and impediment prevented the said steamship from freely manœuvring and passing clear of the same, and, therefore, caused the collision stated in the amended complaint.

Third defense.

And the said defendant, further answering the said amended complaint, alleges, as a third defense:

That, at the time of the said collision, the said steamship, La Bretagne, was in the command, and her movements and navigation entirely under the orders and direction, of a pilot, duly licensed under, and compulsorily imposed upon the defendant by,
14 the authority of the State of New York, and that the regular officers and crew of the said steamship in the service of the defendant had no part in the navigation of the said steamer except to carry out or execute the orders of the said pilot, which they did promptly and efficiently in every particular.

Fourth defense.

And the said defendant, further answering the said amended complaint, alleges, as a fourth defense:

First. That, at the time of the said collision, the said steamship, La Bretagne, was in the command, and her movements and navigation entirely under the orders and directions, of a pilot, licensed

and compulsorily imposed upon the defendant by the public authority of the State of New York, as aforesaid, and, therefore, one of the public servants of the said State, and not a servant of the defendant, and that the regular officers and crew of the said steamship in the service of the defendant had no part in the navigation of the said steamer except to carry out or execute the orders of the said pilot, which they did promptly and efficiently in every particular, as also aforesaid.

Second. That, by virtue of various charters and laws, to which the defendant prays leave to particularly refer, and prove upon the trial of this action, there is, and was at the time of the said collision, duly created and erected within, and as a part of, the said State, a municipality thereof known as the mayor, aldermen and commonalty of the city of New York, and that the water front and riparian rights, including the right to erect and maintain a bulkhead, wharf or pier on the land and land under water bordering the river or stream in which the said collision occurred has been, and was at the time of the said collision, among many other parts of the said water front, above and below, entrusted to the said municipality for public purposes, and that the said wharf or pier has been erected, and was, at the time of the said collision, maintained in ostensible and alleged pursuance of such trust or privilege, so conferred upon the said municipality, and was, therefore, a part of the public property or domain of the said State of New York.

Wherefore, the defendant demands judgment that the said plaintiff's amended complaint be dismissed, with the costs and disbursements of this action.

JONES & GOVIN,
Defendant's Attorneys, 45 *Cedar Street, New York City.*

UNITED STATES OF AMERICA, *Southern District of New York*, } ss.:

A. Forget, being duly sworn, deposes and says: That he is the general agent of the above-named defendant for the United States and Canada; that the foregoing amended answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

A. FORGET.

Sworn to and subscribed before me this 1st day of May, 1895.

FREDERICK KOPF,
[SEAL.] *Notary Public* (34), *N. Y. Co.*

16 Circuit Court of the United States, Southern District of New York.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, Plaintiff,
against
LA COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant.

Referee's Report.

To the honorable the circuit court of the United States for the southern district of New York:

Pursuant to an order of this court, entered herein on the
17 16th day of October, 1893, referring it to me to hear and determine the issues in this action and to report my decision thereon, I, the undersigned, as said referee, do hereby respectfully report that the oath prescribed by the New York Code of Civil Procedure was expressly waived by the parties, and having heard the allegations and evidence of the parties, and having been attended by Enoch L. Fancher and William H. Harris, Esquires, for the plaintiff, and Edward K. Jones and William H. Blymyer, Esquires, for the defendant, and after due deliberation, I decide and find as follows:

Findings of Fact.

First. The plaintiff is a domestic corporation now existing and incorporated January 6, 1880, as alleged in the first paragraph of the amended complaint. It carries on the business of transporting freight and passengers and propelling steamers by steam power on the Hudson river, between the city of Newburgh and the city of New York.

Second. For the purpose of such transportation business Homer Ramsdell, one of the plaintiff's incorporators, entered into and received from the mayor, aldermen, and commonalty of the city of New York, by the board of docks, thereto duly authorized an indenture of lease, made and entered into on the 28th day of August, 1889, as parties of the first part, whereby the said Homer Ramsdell and his assigns were granted for the term of ten years from the 1st of February, 1889, all that certain public wharf property situated on the North river, in the city and county of New York, and known and described as follows, to wit: Pier number twenty-four (24), new, near the foot of Franklin street, including the spurs or triangular projections or extensions on the sides thereof, and the right to use and occupy the same for the special kind of commerce carried
18 on by steam transportation, together with the right to enter upon the said wharf property for the purposes of said lease, and to collect the said wharfage, and to use and occupy the same as aforesaid, with a covenant of renewal of the said lease for a further term of ten years, on the terms and conditions therein specified.

And the said lessors thereby granted permit to the said Homer Ramsdell to erect and maintain upon the said pier, during the said

term, and any renewal thereof, a shed, to be erected in accordance with the laws and regulations in such cases provided.

And it was further provided, in and by the said lease, as follows:

"And the said party of the second part covenants and agrees that he will at all times during said term, including any renewal thereof, put, keep and maintain the said wharf property and every part thereof and the structure thereon, including the said shed, spurs or triangular projections or extensions, in such good and sufficient repair and condition as the board of docks shall reasonably require and deem necessary, under the direction and supervision of the proper officer of the department of docks, and that all such repairs during said term, or any renewal thereof, shall be done at the sole cost, charge and expense of the said party of the second part, his representatives or assigns."

Third. Immediately after receiving the said lease said Homer Ramsdell assigned to the plaintiff corporation the said lease and all rights and privileges thereby granted, and the plaintiff assumed all the obligations and covenants of the said Homer Ramsdell contained in the said lease respecting the said pier and shed. The said assignment of lease to the plaintiff and the agreement of the plaintiff to assume all the covenants and liabilities therein contained, were both dated and acknowledged on the 23d of November, 1889.

19 Fourth. Ever since the execution and assignment of the said lease said plaintiff has been thereunder in the occupancy and possession of said pier, new number twenty-four (24), North river, and of the shed built thereon, and has carried on its said transportation business by the said steamboats from Newburgh, as aforesaid, to the said pier, until it was deprived of the use of a portion thereof by the collision therewith of the defendant steamer, the La Bretagne, as hereinafter stated.

Fifth. At the time of the collision hereinafter named the said pier was six hundred and seventy-one feet in length by sixty feet wide, and was, with the shed thereon, in use by the plaintiff as such assignee.

Sixth. Portions of the said pier and shed were sublet by the plaintiff to other steamboat transportation companies plying their steamers on the Hudson river, and the plaintiff was therefrom in the receipt of rents from such transportation companies.

Seventh. Such rents have been suspended and lost in consequence of the collision hereinafter named, from the time of the said collision, December 10, 1892, to the 10th of March, 1893, and plaintiff has lost the same by reason of such collision.

Eighth. The defendant is a foreign corporation under the name of Compagnie Generale Transatlantique, organized and existing under the laws of the Republic of France, plying its steamers between Havre and New York, one of which steamers is named La Bretagne.

Ninth. At about 8:30 a. m., on the 10th of December, 1892, the defendant's said steamship La Bretagne, while outward bound

20 from the port of New York, having shortly before left her pier on the North river, struck the said pier, new No. 24, in

the occupancy of the plaintiff and did damage to the said pier and shed to the amount of thirteen thousand one hundred and fifty-three dollars and fifty-four cents, and such damage has been, since the occurrence thereof, necessarily repaired by the plaintiff under the supervision of the proper officer of the dock department, at the expense of the plaintiff to the amount of $13,153.34 of which amount $5,460 was paid by the plaintiff on the 15th of February, 1893, and $7,693 on the 15th of March, 1893.

Tenth. The plaintiff also suffered damage by the said collision in the loss of rent, as above mentioned, amounting to two thousand two hundred and fifty dollars, which loss of rent was sustained by the plaintiff on or before the 15th day of March, 1893.

Eleventh. Said plaintiff, under the said lease and assignment thereof and assumption of its covenants, became liable to the dock department of the city of New York, to repair and rebuild the said damaged pier, and the dock department served a notice on the plaintiff, requiring the plaintiff to effect such repairs immediately after the collision, which the plaintiff accordingly did with all due and proper diligence and despatch.

Twelfth. The said vessel, at the time she left her pier, No. 42 North river, was in all respects seaworthy and properly manned, equipped and supplied, and her said owner exercised due diligence to make her so. She had on board a duly licensed pilot, under and pursuant to the laws of the State of New York, and was navigated under his directions up to the time of the said collision, and all his orders were promptly and efficiently obeyed and carried out by the master, officers and crew of said steamship.

21 Thirteenth. The said pilot was not appointed by the owner of said vessel, nor by the master thereof, but the said owner and master were required and compelled by the law of the State of New York to take said pilot and to allow him to take charge of the navigation of said vessel.

Fourteenth. The said collision and the damage resulting therefrom, as aforesaid, were caused solely by the negligence and want of skill and care on the part of the said pilot, and not by any want of skill or negligence on the part of the master, other officers or crew of the said steamship.

Upon the foregoing facts I further find as

Conclusion of Law.

That the defendant is entitled to judgment dismissing the complaint herein upon the merits, with costs to the defendant to be taxed.

Dated New York, June 8, 1894.

WM. G. CHOATE, *Referee.*

22 U. S. Circuit Court, Southern District of New York.

THE HOMER RAMSDELL TRANSPORTATION COMPANY
against
THE COMPAGNIE GENERALE TRANSATLANTIQUE.

Opinion of Referee.

This is an action at common law against the owner of the steamship La Bretagne for damages caused to the plaintiff's pier No. 24 North river, under the following circumstances: The La Bretagne was lying at her dock No. 42 North river on the 10th December, 1892. About five minutes after 8 o'clock in the morning, the tide being about the last of the ebb, the La Bretagne was backed out of her slip in order to start on her voyage to Havre. She was in charge of a Sandy Hook pilot. The tide being ebb, her wheel was put hard-a-port, and she was backed toward the west side of the river as far as it is usual or safe to bring her. A tug was employed to push her stern upstream, and her engines were started full speed ahead. She began to turn down the river, but when she had reached about the middle of the river it was observed by the master and pilot, who were together on the bridge, that she had ceased to turn. The master and pilot were in consultation, and the master suggested that it might be better to stop her. The pilot, however, thought that she had still room to turn in the river, and did not immediately give the order to slow or stop; but after she had run a short distance further he gave the necessary orders to slow,
23 stop and back at full speed; but in spite of these precautions she ran into the plaintiff's pier, striking it with her bow at an angle of 45 degrees, some 20 feet or more from the end on the north side, and inflicted considerable damage.

It is claimed on the part of the defendant that there was no negligence in the management of the steamer on the part either of the master or the pilot, but at most an error of judgment, for the consequences of which no action would lie.

I think, however, that it is clear that the pilot was negligent. The cause of the arrest of the turning of the steamer was probably an under current of the new flood tide striking her bottom. It was, or should have been, evident to him before he gave the order to reverse that there was great danger of her running into the pier. He is chargeable with knowledge of the tides and currents, and cannot claim as a pilot to have been surprised at the action of the ship. He seems to have supposed that the failure of the ship to turn to starboard was temporary and would be presently overcome. In this he took too great a risk, and should have given the order to reverse sooner than he did, and thereby the accident would have been avoided.

It is claimed on the part of the plaintiff that there was negligence in going out upon the ebb tide; also in not employing two tugs instead of one to turn the stern of the ship upstream and in not continuing the use of the tug which was employed longer in that

service. It was shown, however, that the tug employed was a powerful tug; that it was customary to employ one tug and not two for this purpose, and that the tug so employed pushed against the stern as long as it was practicable to do so after the engines of the ship were started forward, and that it was necessary to start the engines forward to prevent her striking on the other side of the river. It was also proved that steamers backed out and turned in the river upon the ebb tide, and that with proper care on the
24 part of the pilot this can safely be done. These allegations of fault, therefore, appear to me to be groundless.

The next question is, whether there was any fault on the part of the master in not interposing his authority to control the action of the pilot, and to insist that he should stop the ship or back her sooner than she was stopped and backed. There seems to be no doubt of the authority of the master in an extreme case to supersede the authority of the pilot and to take charge of the ship himself where it is necessary for the safety of the ship or the avoidance of imminent danger. The cases, however, all agree that it must be an extreme case of obvious danger or incapacity on the part of the pilot to authorize such interference.

As regards the navigation of the ship, she is under the exclusive control of the pilot, and, even while the master believes that the action of the pilot is indiscreet or involves danger, it does not follow that he should interfere with the navigation. He may do his whole duty by pointing out what he conceives to be the danger, and leaving the responsibility where it is, upon the pilot.

In the case of the Maria, 1 W. Rob., 110, Dr. Lushington says: "It would be a most dangerous doctrine to hold, except under most "extraordinary circumstances, that the master could be justified in "interfering with the pilot in his proper vocation. If the two au- "thorities could so clash, the danger would be materially aug- "mented, and the interests of the owners, which are now protected "both by the general principles of law and specific enactments, "from liability for the acts of the pilot would be most severely "prejudiced. It is the duty of the master to observe the conduct "of the pilot, and in the case of palpable incompetency, whether aris- "ing from intoxication or ignorance, or any other cause, to inter- "pose his authority for the preservation of the property of his em- "ployers."

So in the Lochlibo, 3 W. Rob., 329, the same learned judge
25 says: "I should never go to the length of saying that the "mere suggestion to the pilot on the part of the master to "take in this sail, or otherwise to keep as near the South Sand "light, and *vice versa*, or to bring the ship up, was interfering, in "the legal acceptation of the term, with the duties of the pilot. "Illegal interference is of a different description. If, for example, "in this case the boatswain had called out to the man below to star- "board the helm, or, if the master had called out to port the helm, "it would be interference, but it would not be interference to con- "sult the pilot or to suggest to him that the measures pursued were

" not proper, or that other measures would, in all probability, be " attended with greater success."

In the case of the ship Marcellus, 1 Clifford, 491, Mr. Justice Clifford says: " While on board, the pilot, in the absence of the " master, has the exclusive control, and direction of the navigation " of the vessel, but if the master is present the power of the pilot " does not so far supersede the authority of the master, that the latter " may not, in case of obvious and certain disability or gross igno- " rance and palpable and imminent danger or mistake, disobey his " orders and interfere for the protection of the ship and lives of those " on board. Divided authority in a ship with reference to the same " subject-matter is certainly not to be encouraged, and can never be " justified or tolerated except in case of urgent and extreme neces- " sity. While standing by and witnessing a self-evident mistake, " manifestly and imminently endangering the ship, and certain to " cause a collision, the master should not remain silent, but might " well interpose so far, at least, as to point out the error and suggest " the proper corrective."

In the present case the master did his full duty in suggesting to the pilot the danger of proceeding, but in answer to his remonstrance, the pilot explained that he thought the ship would come round.

26 His knowledge or supposed knowledge of the tides and currents and their effects upon the ship is or should be far superior to that of the master. It is on account of this superior knowledge that the ship is obliged to employ the pilot, and I think it is clear that this case does not come within that class of cases of extreme peril or incompetency in which the master is justified or it becomes his duty to take the management and navigation of the ship out of the hands of the pilot.

The next question is, whether the owner of a ship is liable at common law for damages occasioned by the negligence of a pilot compulsorily employed.

There is no doubt in this case that the law of New York compels the ship to employ a pilot appointed by the State.

By the New York pilot law a foreign ship, when inward bound, is obliged to take the first pilot that offers his service. While the masters of certain vessels may be licensed to pilot their own vessels, it is provided in the statute that all vessels from foreign ports shall take a licensed pilot, or, in case of refusal, pay full pilotage; and it is further provided that any person not holding a license who pilots a vessel in or out of the harbor of New York shall be held guilty of a misdemeanor, and any one employing a person not holding a license to pilot a vessel, shall forfeit and pay the sum of $100.

The provision with regard to outward pilotage is that the pilot who brought in the ship has the right by himself or one of his boat's company to take her out unless he has been complained of for misconduct; subject, however, to the right of the ship-owner to object to this particular pilot, in which case the commissioners of pilots shall assign another pilot from the same boat's company to take the ship out.

3 Rev. Stat. (7th ed.), p. 2017, 2019, 2020.

If the ship-owner were at liberty to select a pilot out of a
27 class of pilots licensed by the State, it could not be held that the ship-owner was compelled to take the particular pilot employed. But the right to object to one particular pilot certainly does not make the appointment of another selected by the commissioners from the same boat's crew a voluntary appointment by the owner of the vessel of such substituted pilot.

In the case of the China, 7 Wall., 53, the majority of the court held that the New York statutes created a system of compulsory pilotage. Both the master and the owner are subjected to penalties besides their liability to pay full pilotage in case of their refusal, and as to the master such refusal is expressly made a misdemeanor. It seems to me there can be no question that the pilotage is compulsory.

The plaintiff has proceeded by a common-law action. He could not do otherwise, because the tort for which he proceeds is not a marine tort, not being consummated on navigable water. The pier injured is part of the land.

The Plymouth, 3 Wall., 20.
The Maud Webster, 8 Ben., 547.
The Neil Cochran, 1 Brown's Ad., 162.
The Ottawa, 1 Brown's Ad., 356.
The M. R. Brazos, 10 Ben., 437.

The admiralty on the foregoing authorities would have had no jurisdiction to entertain the suit for the damage done to this pier, either against the vessel or against her owner. The question involved therefore is one strictly of liability at common law.

In England it is settled after a good deal of discussion that independently of the statutes regulating the pilotage, and which exempt the owner from liability, the owner of a vessel cannot be held at common law personally liable for the negligence of a pilot whom the vessel is compelled to employ, for the reason that the ground of the liability of the owner for the negligence of those who
28 navigate the vessel is based upon the relation between the owner and the parties guilty of negligence, of master and servant or principal and agent, and that as no such relation exist between the owner and the pilot who is imposed upon him by the superior authority of the State, the reason for the liability in case of a master or crew appointed by the owner ceases. The English courts, however, hold that if the master or crew co-operate in any way in the negligent act of the pilot or the damage is caused by their disobedience of his orders, the owner is liable. To exempt the owner the fault must be that of the pilot alone. The principal English cases are the following:

The Maria, 1 W. Rob., 102.
The Protector, 1 W. Rob., 54.
The Agricola, 2 W. Rob., 19.
The Neptune 2nd, 1 Dods, 467.
The Christiana, 7 Moore P. C. C., 171.
The Geraloms, 3 Hagg., 169.
Bennett *v.* Morta, 7 Taunton, 258.

Att'y General *v.* Case, 3 Price.
The Annapolis, Lush., 312.
Caruthers *v.* Sydebotham, 4 M. & S., 77.
The Halley L. R., 2 Ad. & Ec., 3 S. C. L. R., 2 P. C., 201.

And the rule so established is quite in accordance with the general principle of the law of master and servant or principal and agent, which holds one person liable for the tortious act of another only where the person committing the wrong is employed by the person sought to be held.

The mere fact that the person sought to be held derives some benefit in an indirect way from the act done is not enough if the person committing the wrong is employed by another party exercising an independent employment. Thus a party hiring a carriage of a livery-stable keeper is not liable for the negligence of
29 the driver, and the butcher employing a licensed drover to lead a bullock through the city is not liable for the negligence of the servant of the drover, and a railroad company is not liable for the negligent act of the servant of the contractor who builds the road.

Laugher *v.* Pointer, 5 B. & C., 547.
Milligan *v.* Wedge, 12 A. & E., 737.
Reedie *v.* R'y Co., 4 Exch., 241.

In this country the question of the liability of the owner of a ship for the act of a compulsory pilot has received considerable discussion, but there appear to be only two cases in which the point has been directly decided that the owner is liable *in personam* in such case. These are the cases of Bussy *v.* Donaldson, 4 Dal., 206, by the supreme court of Pennsylvania decided in 1800, and Williamson *v.* Price, 4 Martin (N. S), 399, decided in 1826 by the supreme court of Louisiana. There are dicta, however, to the same effect in other cases in this country, and especially in the case of the China, *supra*, where Mr. Justice Swayne, delivering the opinion of the court, disapproves of the rule of the English cases, and cites with approval the case of Bussy *v.* Donaldson. The case of the China, however, was the case of a proceeding *in rem* against the vessel for damages from a collision caused by the fault of the pilot, and the decision stands upon a ground wholly independent of the personal liability of the owners. As the court says in that case: "The maritime law "as to the position and powers of the master and the responsibility "of the vessel is not derived from the civil law of master and serv- "ant, nor from the common law; it had its source in the commer- "cial usages and jurisprudence of the middle ages. * * * Ac- "cording to the admiralty law the collision impresses upon the "wrong-doing vessel a maritime lien; this the vessel carries with it
"into whose ever hands it may come. It is inchoate at the
30 "moment of the wrong, and must be perfected by subsequent "proceedings."

On the question of the liability of the vessel, the case of the China has been followed by the same court in the case of the Mer-

rimac, 14 Wall., 199, which was not, however, a case of compulsory pilotage like the case of the China.

The opinion in the case of Bussy *v.* Donaldson, 4 Dal., 206, by Shippen, C. J., shows that the point was taken before the court that the owner was not liable for the reason that the pilot was not the servant of the owner, but the officer of the State. The court says of this point: "The distinction is rather plausible than solid. The "legislative regulations were not intended to alter or obliterate the "principles of law by which the owner of a vessel was previously "responsible for the conduct of the pilot; but to secure in favor of "every person (strangers as well as residents) trading to our port, a "class of experienced, skilful and honest mariners to navigate their "vessels safe up the bay and river Delaware. The mere right of "choice indeed, is one but not the only reason why the law, in gen-"eral, makes the master liable for the acts of his servant; and in "many cases, where the responsibility is allowed to exist, the servant "may not, in fact, be the choice of the master. For instance, if the "captain of a merchant vessel dies on the voyage, the mate becomes "captain, and the owner is liable for his acts, though the owner did "not hire him originally nor expressly choose him to succeed the "captain. The reason is plain. He is in the actual service of the "owner, placed there, as it were, by the act of God; and so, in the "case under consideration, the pilot was in the actual service of the "owner of the ship, though placed in that service by the provident "act of the legislature. The general rule of law, then, entitles the
"plaintiff to recover; and we have heard of no authority,
31 "we can recollect none, that distinguishes the case of a pilot
"from those numerous cases on which the general rule is "founded."

Smith and Brackenridge, JJ., concurred.

The reasons given for the rule seem to depend more upon considerations of convenience than upon strict legal principle. If the effect of the legislative regulation was to take the ship out of the hands of her owner and put her in the hands of a public officer, there seems to be no principle of law under which the owner could be responsible for the negligence of such public officer, even if the legislative act did not express any intention to alter or obliterate what would otherwise have been the responsibility of the owner for the act of the pilot—that is, for the act of a pilot appointed by the owner. Of the many cases said to exist of responsibility for the act of another, though such other was not the choice or appointee of the person held liable, the illustration is not a fortunate one. In case of the death of the captain, the mate becomes captain with the consent and by the authority of the owner, and whether appointed by the owner himself or by the captain, he is appointed by the act of the owner or by his authority, and it is a part of his understood duty by the maritime law to take command of the vessel in case of the death of the captain. So the circumstance that the voyage is for the benefit of the owner, and that the pilot is in his actual service in the sense that he is working towards the completion of the

voyage upon which the ship is sent by the owner, the same argument would hold with reference to the passenger in the livery-stable carriage, and would impose a responsibility for the drover's servant upon the owner of the bullock, and indeed would impose responsibility upon the owner of a ship for the negligent act of the master or crew employed by the charterer.

The law is well settled that if the terms of the charter-party are such as to amount to a demise of the ship, putting her out
32 of the control and possession of the owners, and under the control and into the possession of the charterers, who appoint the master and crew, the owners are not responsible for the negligent acts of the master and crew, whether to persons contracting with the master, as shippers of cargo, or to outside parties, injured by negligent navigation, except, perhaps, as to the former, who may be ignorant of the terms of the charter-party, and who contract with the master, believing him to be the servant of the owners. The test of liability of the owner in such cases is, whether the master and crew were his servants or not. (Fenton *v.* City of Dublin Steam Packet Co., 8 Ad. & Ellis, 835. For a very full and careful statement of this doctrine, and the authorities, see Abbott on Shipping, 12th ed., pp. 57–70.)

And yet in all such cases the ship is liable for negligent navigation in the admiralty *in rem*. (The Ticonderoga, Swabey, 215; the Tasmania, 13 P. Div., 110; the Lewington, 2 Asp. M. L. Cas. (N. S.), 475.) And the only limitation of this liability *in rem* which these cases suggest, is that the liability of the ship *in rem* ceases where she is navigated, and the injury is done by some one not deriving his authority to navigate her from the owners; that is, if a ship is sent to sea without the owner's consent, or tortiously, she may not be bound *in rem*.

The analogy of the non-liability of the owners of a ship under charter, and therefore out of control of the owners, and navigated, not by their servants, but by the servants of other persons, certainly supports strongly the defense in this case.

Since the case of Bussy *v.* Donaldson the true ground and limit of the liability of the master or principal for the negligence of the servant or agent has been very carefully considered, both in England and in this country, and unless an exception is made with regard to a vessel, and the owners of vessels, the case of Bussy *v.* Donaldson is out of harmony with the law of master and servant and principal and agent as now held.

33 The argument of convenience with regard to the remedy is indeed made a reason for this exceptional liability in the case of Williamson *v.* Price, 4 Martin (N. C.), 399.

I think both in that case and in the case of Bussy *v.* Donaldson the court assumed that the pilotage was compulsory. The Louisiana case is decided largely upon the authority of Bussy *v.* Donaldson and the case of the Neptune (1 Dods., 467); which latter case was afterwards overruled.

The court refers to the case of Fletcher *v.* Braddick (5 B. & P., 182) as sustaining the rule. That was a case of a vessel chartered

by the defendant to the Government, and having on board a naval officer who had, in general, the command of the ship, but the master and crew were appointed by the owner. It seems, however, that that case is rather an authority against the liability in case of compulsory pilotage, because the damage being caused by fault of navigation, the owner was held liable, but the court intimated that if it had been caused by the fault of the naval officer he might not be liable.

The argument of convenience is thus stated by the supreme court of Louisiana: "It seems hard, on the one side, that, while "necessity and in many places the law, compel to place a vessel "under the absolute command of a pilot, his misconduct should "subject to damages the owner of the ship on whom he is, it may "be said, forced. But, on the other hand, pilots are very seldom "persons able to compensate the owner of a vessel run foul of. The "owner of a vessel by whom the damage is done, receiving the "benefit of the voyage, it has been judged he should indemnify "persons injured by his vessel while employed for his benefit."

This argument from convenience, as a reason for holding the owner liable, is stated by the court in the case of the China
34 thus: "The maxim of the civil law, *sic utere tuo ut nonlaedas* "*alienum*, may, however, be fitly applied in such cases as the "one before us. The remedy of the damaged vessel, if confined to "the culpable pilot, would frequently be a mere delusion. He "would often be unable to respond by payment, especially if the "amount recovered were large. Thus, where the injury was the "greatest, there would be the greatest danger of a failure of justice."

The same reason is stated by Parker, Ch. J., in the case of Yates v. Brown, 8 Pick., 22. But that was not a case of compulsory pilotage.

The argument from convenience or a desire to secure to the party injured a remedy against the person who can respond in damages—which it is assumed a pilot ordinarily cannot do—may have had its legitimate influence in establishing the rule of maritime law making the vessel liable for all torts committed by her, at least where she is navigated with the consent of or under authority derived from the owners. She goes from port to port, and if she were not herself held responsible in the maritime courts of the world for her torts, persons injured thereby would, for the most part, be remediless; and this may have been the reason for the rule making her liable—a rule of so great antiquity that the time and manner of its origin are lost in the past, but so wholesome that it stands undisturbed to this day wherever the maritime law is administered. It is not necessary to inquire whether the decision in the case of the China was a correct application of this principle according to the general maritime law. It must be assumed that that decision is at present the established law of our courts of admiralty so far as relates to the liability of the vessel *in rem*. But such an argument, from convenience, has no place in determining the question of a common-law liability of the owner which rests upon rules of law governing the responsibility of the master for the acts of the serv-

ant or the principal for the acts of the agent. That the
35 liability *in personam* of the owner does stand upon this principle in this country as well as in England appears by the case of Sturgis *v.* Boyer, 24 How., 123, in which it was held that a vessel employing a tug to move her from place to place is not liable for the fault or negligence of the master and crew of the tug who are employed by the owners of the tug. Mr. Justice Clifford there says: "Unless the owner and the person or persons in charge of the "vessel in some way sustain toward each other the relation of prin- "cipal and agent, the injured party cannot have his remedy against "the colliding vessel. By employing a tug to transport their vessel "from one point to another, the owners of the tow do not necessa- "rily constitute the master and crew of the tug their agents in per- "forming the service. They neither appoint the master of the tug "or ship the crew, nor can they displace either the one or the other. "Their contract for the service, even though it was negotiated with "the master, is, in legal contemplation, made with the owners of the "vessel, and the master of the tug, notwithstanding the contract "was negotiated with him, continues to be the agent of the owners "of his own vessel, and they are responsible for his acts in her "navigation."

In that case the court follows and approves the case of Sproul v. Hemmingway (14 Pick., 1), in which Ch. J. Shaw discusses the question at considerable length on the ground of liability of the owner of a vessel at common law for the negligence of the master and crew of a tug employed to tow her, and the liability was denied on the ground that the master and crew who were guilty of negligence were not the servants of the owner of the ship.

While the English courts have reached a different conclusion from the Supreme Court as to the liability of the tow and her owner for the negligence of those in charge of the tug, yet it is upon grounds which do not conflict with the principle of the liability of the master for the acts of a servant; that difference is carefully pointed out by Judge Lowell in the case of the Belknap, 2 Low., 281.

The English courts have taken a different view of the relation between the owner of the ship and those managing the tug;
36 the latter are held to be the servants of the former. The owner of the vessel is held responsible as a master for the acts of his servant under the doctrine of *respondeat superior*. (The Belknap, 2 Lowell, 281.)

It is not pertinent to the present inquiry whether in Sturgis v. Boyer, which was a suit *in rem*, it was rightfully assumed by the court that the vessel was not liable if the owners would not be liable *in personam*, or whether that case can be reconciled with the later case of the China, in respect to the liability of the vessel.

The case of the Creole (2 Wall., Jr., 485) was a libel *in rem* against the vessel in admiralty. So also was the case of the bark Lotty, Ole., 329.

The other American cases cited in support of the liability of the defendant are clearly distinguishable.

The case of the Julia M. Halleck (1 Sprague, 539) does not appear to be a case of compulsory pilotage.

The Massachusetts pilot law, while requiring a vessel refusing a pilot to pay pilotage fees, is not regarded as making pilotage compulsory.

The Carolus, 2 Curtis, 68.
The Marcellus, 1 Clif., 481.

The case of Snell *v.* Rich (1 John., 305) involved the question of the liability of the master while a pilot was on board. As stated in the case of the China, the liability of the master does not depend upon the rules of the common law, but the rules and usages of the maritime law.

It is evident, from the opinion of Mr. Justice Curtis, in the case of the Carolus, *ut supra*, that if the pilotage had been compulsory he would have held the owner not liable, and although this dictum is disapproved by Mr. Justice Clifford in the case of the Marcellus (1 Clif., 492), it would seem to be well founded both on reason and authority.

The case of Yates *v.* Brown, *ut supra*, indeed, states the general proposition that the owners of a vessel which, by collision with another vessel, has caused damage through the fault or negli-
37 gence of any one on board, is answerable to the injured party in respect of their property, notwithstanding there may be a pilot on board who has entire control and management of the vessel. It is put upon the ground of convenience. It is doubtful if in that case the pilotage was understood by the court to be compulsory.

In the other Massachusetts cases the pilotage has been held not compulsory. Of course, if the owner accepts a pilot not by compulsion of law, but voluntarily, no distinction can be made between the negligent acts of such a pilot and a master appointed by the owner; but it appears to be true of the case last cited, as of many others in which the doctrine of a more convenient and satisfactory remedy for the injured party is urged, that the court adopted and applied to the question of the liability of the owner, consciously or unconsciously, the principle of the maritime law which imposes a liability upon the vessel, which principle is not strictly or properly applicable where the case has to be determined purely upon the principles of the common law. The liability of the owner *in personam* by the maritime law has been said to be the same as at common law. The Germania, 9 Ben., 356. And I find no cases inconsistent with this dictum. It is certainly most unjust to give a remedy against a party who is not legally responsible, because the injured party may have an inadequate remedy against the party who is legally liable. And with the utmost respect for the courts which have put the liability of the owners on the argument of convenience, I am unable to follow them, or to attribute to this circumstance the effect of making a distinction between vessels and other chattels as respects the liability of the owners for negligence in their use. I think the common law makes no such distinction.

The case of Denison *v.* Seymour (9 Wend., 1) was the case of a vessel in charge of a pilot appointed by the owners, and the question before the court related to the liability of the master in such case. It has no bearing upon the question involved in the present case.

While, therefore, it must be admitted that there is some
38 authority, and many dicta in favor of holding the owner of a vessel liable for the negligence of a pilot compulsorily imposed upon the vessel, I have come to the conclusion that, both upon reason and authority, the rule is otherwise, and that, therefore, the defendant in this case is entitled to judgment.

The objection that this pier was the property of the city, and that the city is but a part of the government of the State, and that it was the agent of the State whose negligent act caused the injury, has no merit as a ground for refusing relief in damages. The argument seems to be that the property destroyed was not the property of the plaintiff, but the property of the State. The action, however, is for the injury to the private and individual interest of the plaintiff in this property, the fee of which belongs to the public. By obtaining a lease from the city, the plaintiff acquired an interest, which is entirely independent of the property of the State, and by the terms of the lease the plaintiff was under obligation to repair the pier, and both upon the ground of this obligation, whereby the plaintiff has been injured, and also upon the ground of the plaintiff's special interest in the pier, which is quite independent of that of the State or the city, which special interest has been damaged by the act of the pilot, it would be no obstacle in my opinion to the plaintiff's recovering the damage, if otherwise entitled, that the ... in the land is vested in the city as one of the departments of the State government.

So also the defence set up in the answer that the Harter act, so called (27 St. Ch., 105, p. 445), relieves vessels from all liability for the negligent act of the master and crew, if the vessel is properly manned and equipped for the voyage, cannot be sustained. That act is limited to the regulation of the liability of the vessel, her owners and master to the shipper and has no application to torts committed against other persons, or their property, nor do its
39 provisions seem to be retroactive. This tort was committed before the passage of the act.

The amount of the damages may, however, be properly determined upon this reference in order that judgment for the proper amount may be finally entered, if the court should hold the plaintiff entitled to recover.

It is proved, that the cost of repairing the plaintiff's pier was $13,153.34. Of this amount $5,460 was paid by the plaintiff on the 15th February, 1893, and the balance on the 15th March, 1893; and interest is to be allowed on those payments from the said dates respectively.

It is also proved that the plaintiff lost the opportunity to rent out a part of the pier in consequence of the damage, for a period of three months. There was a demand for such property, and the plaintiff could have obtained for it, during the period it was thus

deprived of its use, $2,250; and I think the plaintiff would be entitled to recover this sum, in addition to its actual expenses, with interest from the 15th day of March, 1893, if it were entitled to a judgment.

But for the reason given above the defendant is entitled to judgment with costs.

N. Y., May 28th, 1894.

WM. G. CHOATE.

Case settled as printed and ordered on file.

February 25, 1896.

WM. G. CHOATE, *Referee.*

40 U. S. Circuit Court, Southern District of New York.

THE HOMER RAMSDELL TRANSPORTATION COMPANY, Plaintiff,
against
LA COMPAGNIE GENERALE TRANSATLANTIQUE, Defendant.

This action having been referred by an order entered herein on the 16th day of October, 1893, to William G. Choate, Esq., to hear and determine all the issues herein, and after trial had on due notice to all parties, the said referee having on the 14th day of
41 June, 1894, duly made and filed his report herein, stating his findings of fact and conclusion of law thereon, and directing judgment dismissing the *the* complaint herein upon the merits, with costs to the defendant to be taxed, and the plaintiff having filed exceptions to the referee's report and an order having been made overruling the same and confirming said report, and the defendant's costs having been duly adjusted at the sum of seven hundred and twenty-nine and $\frac{65}{100}$ dollars ($729.65);

Now, on motion of Jones & Govin, attorneys for the defendant, it is

Ordered, that the plaintiff's complaint be and the same is hereby dismissed, and that the defendant recover of the plaintiff the sum of seven hundred and twenty-nine and $\frac{65}{100}$ dollars costs of this action.

Judgment signed this 14th day of April, A. D. 1898.

(S'd) JOHN A. SHIELDS, *Clerk.*

(Endorsed:) Circuit court of the United States for the southern district of New York. The Homer Ramsdell Transportation Co. *vs.* La Compagnie Generale Transatlantique. Judgment-roll. U. S. circuit court. Filed Apr. 14, 1898, 2.09 p. m. John A. Shields, clerk.

42 UNITED STATES OF AMERICA, *Second Circuit,* } *ss.*:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit—

Do hereby certify that the foregoing certificate in the case entitled

Homer Ramsdell Transportation Company against La Compagnie Generale Transatlantique was duly filed and entered of record in my office by order of said court on the 6th day of December, 1899, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Second Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of New York, in the State of New York, this 7th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

43 [Endorsed:] U. S. circuit court of appeals, 2nd circuit. Homer Ramsdell Transportation Co. *vs.* La Compagnie Generale Transatlantique. Proposed certificate to Supreme Court, with notice of settlement. Jones & Govin, att'ys for def't in error, 45 Cedar street, New York. Service of a copy of the within-proposed certificate & notice of settlement admitted this 23rd day of November, 1899. E. L. Fancher, att'ys for pl'ff in error. United States circuit court of appeals, second circuit. Filed Dec. 6, 1899. William Parkin, clerk.

[Endorsed:] 23.80. United States circuit court of appeals, second circuit. Homer Ramsdell *v.* La Compagnie Generale Transatlantique. Certificate.

Endorsed on cover: File No., 17,584. U. S. C. C. of appeals, 2nd circuit. Term No., 166. The Homer Ramsdell Transportation Company, plaintiff in error, *vs.* La Compagnie Generale Transatlantique. (Certificate.) Filed December 14th, 1899.